taken into consideration. Even if the aggressor is disarmed, if there is a possibility of his wresting the weapon from the defender, the latter has a right to use violence, but of course not to cause his death. But he can even cause death if one of the two aggressors is still armed. It would be circumscribing the right of private defence of the body with meticulous and unjustifiable restrictions if it were to be held that, when the person attacked had managed to obtain the weapon from the grasp of the attacker, he was not to be allowed to use that weapon in his defence in order to prevent the attacker from regaining possession of it."
(The underlining is mine.)

In the light of the evidence produced by the prosecution in this case I think there was a reasonable possibility, nay probability, that if the deceased had himself managed to get hold of the knife, he would have struck some blows with the knife on the accused. In the circumstances and in the situation in which the accused found himself there was bound to be in his mind a reasonable apprehension of death or grievous hurt being caused to him by the deceased unless he got out of the reach of the deceased. It is not a case where there was an exchange of abuse between the borrower and the lender when the latter went to the house of the borrower in order to collect the debt and the borrower without any more picked up a knife and stabbed the lender with it. That certainly will be a case of exceeding the right of private defence. *Mehrotra* in his book already cited by me continues to say:

"Where a right of private defence is pleaded the essence of the case should be to ascertain who was the aggressor and whether the accused party acted in the exercise of his right of private defence or otherwise. But he who is assaulted is not bound to modulate the defence step by step according to the attack before there is reason to believe that the attack is over. He is entitled to secure his victory as long as the contest lasts. He is not obliged to retreat, but may pursue his adversary till he finds himself out of danger, and if in any conflict between them, he happens to kill, such killing is justifiable. And, of course, when the assault assumed a dangerous form every allowance should be made for one who with the instinct of self-preservation strong upon him, pursues his defence a little further than to a perfectly cool by-stander would seem absolutely necessary. The question in such cases will not be whether there was an actually continuing danger, but whether there was a reasonable apprehension of such danger.... Under certain circumstances exaggeration of the danger that the accused was facing will not be unreasonable and the law will always make just allowance for the sentiment of the person placed in situation of peril, who has no time to think. His blood then is hot and his sole object is to strike a decisive blow so as to ward off the danger. But courts should not at the same time forget that the right of private defence is a very limited right. It cannot be converted into a right of reprisal."

It is for the party setting up the right of self defence to prove either by independent evidence or from the prosecution evidence or the surrounding circumstances that what he did was in the exercise of his right of self defence. In this case the defence has through the prosecution witnesses proved that the accused was acting in his right of private defence. It is reasonable to suppose that the accused thought in the critical situation in which he was that the deceased might wrest the knife from his hand and use it against him. The reasonable apprehension of death at the hands of the deceased cannot thus be said to have left the mind of the accused. In the circumstances I hold that there is no case to meet. The accused is discharged.

Accused discharged.

Solicitors: *Elyas Majeed & Co.*

PUTEH BIN MAHMOOD v. NG TWEE & ANOR.

[O.C.J. (Sharma J.) November 28, 1970]

[Muar — Civil Suit No. 142 of 1968]

Executors and Administrators — Administration action — Suit brought for benefit of 'parent' — Whether includes 'stepmother' — Civil Law Ordinance, 1956, s. 7.

Civil Law Ordinance, 1956, s. 7 — Definition of 'parent'.

Interpretation of Statutes — Fatal Accidents Enactment, State of Johore (No. 6 of 1930) — Definition of 'parent' — Repeal of Statute (before accident) — Whether position same in the Civil Law Ordinance, 1956.

This action was brought for the benefit *inter alia* of the stepmother of the deceased. The question arose whether a stepmother should be treated for the purpose of the Civil Law Ordinance, 1956, as if she was the mother.

Held: for the purposes of the Civil Law Ordinance, 1956, the term "parent" does not include a stepfather or stepmother.

Case referred to:-

(1) *Free Lanka Insurance Co. Ltd.* v. *Ranasinghe* [1964] A.C. 541.

CIVIL SUIT.

James Chen for the plaintiff.

P. Selvadurai for the defendant.

Sharma J. (delivering oral ruling): The plaintiff as the administrator of the estate of Arshad bin Mahmood has brought this suit and in paragraph 1 of the statement of claim says that the suit is for the benefit of himself, as the brother of the deceased, and for the benefit of his brothers Long bin Mahmood and Kadir bin Mahmood and sister Rahimah binte Mahmood. It is also stated that his stepmother Asmah binte Lembak was a dependant of the deceased and the suit is also for her benefit. Mr. James Chen, counsel for the plaintiff, has told me that the claim under paragraph 1 of the statement of claim is under section 8 of the Civil Law Ordinance which refers to the claim of the estate of the deceased. I am not concerned with who the beneficiaries of the estate of the deceased are. The administrator in his capacity as administrator can always bring a suit on behalf of the estate and in the course of administration it is his duty to administer and distribute the estate. Paragraph 6 of the statement of claim says that it is only Asmah binte Lembak, the stepmother of the deceased, who has suffered loss and damage in that she has been deprived of the pecuniary benefits which she was deriving from the deceased by way of support or maintenance. Mr. James Chen says that the claim under paragraph 6 of the statement of claim is under section 7 of the Civil Law Ordinance 1956. Section 7(2) of the Civil Law Ordinance 1956 says that the suit which is brought "shall

be for the benefit of the wife, husband, parent and child, if any, of the person whose death has been so caused . . . " Section 7(11) defines the word "parent" as including "father, mother, grandfather and grandmother." It is impressed upon me that in considering the word "parent" I should give it such a liberal construction so as to include a stepmother in the ambit of the definition of "parent". In other words I should hold that for purposes of the construction of section 7 of the Civil Law Ordinance a stepmother should be treated as if she was the mother. In support of this proposition reliance is placed upon the definition of the word "parent" found in the Fatal Accidents Enactment of the State of Johore (No. 6 of 1930) according to which " "Parent" *shall include* father and mother; grandfather and grandmother; and stepfather and stepmother." It will be observed that in the definition of the word "parent" in the Civil Law Ordinance 1956 the words "stepfather and stepmother" have been totally deleted or excluded from the definition. Further the word "shall" appearing before the word "include" in the Johore Enactment is missing in the definition as embodied in the Civil Law Ordinance. It is argued that as the word used is "includes" the category of persons contemplated is only illustrative and not exhaustive. I have been asked to give the word "mother" not only its ordinary popular and natural meaning but an extended meaning. The Civil Law Ordinance 1956 was enacted "to consolidate and amend the law relating to civil law to be administered in the Federation of Malaya." By section 29 of this Ordinance the whole of the Johore Enactment No. 99 (which is the same as Enactment No. 6 of 1930) was repealed. The common law rule is that if an Act of Parliament expires or is repealed, it is regarded in the absence of any provision to the contrary as having never existed except as to matters and transactions which fall within the period when the Act repealed was still in force. It has been expressly provided in our Interpretation Act 1967 that the repealing Act does not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment which is repealed.

The accident in respect of which the claim is brought in the present suit took place on the 17th March 1966. At that time the stepmother cannot be said to come within the definition of "parent" under the Johore Enactment because the whole of the Johore Enactment stood repealed on the 17th April 1956. If the accident had taken place prior to the 17th April 1956 I am of the view that her rights could not be challenged, as those rights would have remained alive and could not be affected by the new definition of "parent" introduced in the Civil Law Ordinance 1956. The case of *Free Lanka Insurance Co. Ltd.* v. *Ranasinghe*[1] may be referred to in this connection.

It is a well known canon of construction that it is presumed that the legislature does not intend to make any change in the existing law beyond that which is expressly stated in or which follows by necessary implication from the language of the statute in question. *Maxwell* on Interpretation of Statutes (12th Edition) at page 116 says in connection with this:

> "It is thought to be in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness and to give any such effect to general words merely because they have a meaning that would lead thereto when used in their widest, usual, natural or literal meaning, would be to place on them a construction other than that which Parliament must be supposed to have intended. If the arguments on a question of interpretation are fairly evenly balanced that interpretation should be chosen which involves the least alteration to the existing law."

If, however, the words of a statute are plain and unambiguous there is no place for the application of the common law presumption that there was no intention on the part of the legislature to alter the law. It will be observed that the words "stepfather and stepmother" appearing in the definition of "parent" in the Johore Enactment were totally deleted and expunged from the definition of "parent" in the Civil Law Ordinance. The only inference that can be drawn therefrom is that in repealing the Johore Enactment the legislature thought it fit that the stepfather and stepmother should not remain included in the definition of the word "parent" when the Civil Law Ordinance 1956 came into force.

The Civil Law Ordinance 1956 is not only a consolidating Ordinance but also an amending Ordinance. I quite agree with Mr. James Chen that in the case of a consolidating Act there is a strong presumption that the consolidating Act does not alter the law contained in the statute which it replaces, as the consolidating Act only reproduces the law as it stood before and the presumption is that the words used in the consolidating Act bear the same meaning as they had at the time the enactments consolidated were passed. The Civil Law Ordinance, however, is not only a consolidating piece of legislation but also a legislation whereby the various Acts referred to in the schedule to the Ordinance were repealed and the Ordinance itself amended the law in the various States. Section 7 of our Civil Law Ordinance is a reproduction (with some minor modifications) of sections 1 & 2 of the English Fatal Accidents Act, 1846 to 1908 and section 2 of the Law Reform (Miscellaneous Provisions) Act 1934. The definition of the words "parent" and "child" appearing in section 2 of the Law Reforms (Miscellaneous Provisions) Act 1934 is given as follows:

> "For the purposes of the Fatal Accidents Acts, 1846 to 1908, a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under the provisions of those Acts is included within the meaning of the expressions "parent" and "child", any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters."

The proviso to section 7(11) of our Ordinance only adopts or extends this definition as far as the definition of the word "child" is concerned. It does not extend the meaning of the word "parent."

The right to recover damages for having wrongly caused the death is wholly statutory and a person's right to be benefited under section 7(2) has of necessity to be traced to the terms of the Ordinance. The cause of action vests in the designated persons. It is only the designated beneficiaries who are entitled to compensa-

tion for a pecuniary or material loss. The designated beneficiaries in our Civil Law Ordinance are the wife, the husband, the parent and the child, if any, of the deceased. The law was amended in England in 1959. Section 1(2)(b) of the English Fatal Accidents Act, 1959 enacts as follows:

"In deducing any relationship for the purposes of the said Act and this Act any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child."

I am of the view that the stepfather and stepmother have been deliberately omitted from our legislation which is primarily based upon and follows the pre-1959 English legislation on the subject. Our legislature has not up to now adopted the amendments brought about in England by the Fatal Accidents Act, 1959. It is a matter for the legislature to decide whether it should follow the pattern of the new legislation in England.

The Johore Enactment having been repealed and the law having been amended, I am of the view that there is no force in the contention of the plaintiff that his stepmother is contemplated by the legislature as being included in the term "parent." Her rights, if any, became extinct on the passage of the Civil Law Ordinance, 1956.

Judgment accordingly.

Solicitors: *Laycock & Ong; Rodyk & Davidson.*

GNANASUNDRAM v. GOVERNMENT OF MALAYSIA

[O.C.J. (Abdul Hamid J.) December 18, 1970]

[Kuala Lumpur — Civil Suit No. 204 of 1968]

Administrative Law — Appointment as Temporary Enforcement Officer — Termination of employment — Termination in accordance with terms of offer of appointment — Termination on giving one month's pay in lieu of notice — Action for wrongful termination of appointment — Whether person has a right to be heard — Federal Constitution, art. 135(2).

Contract — Employment — Appointment of officers in the Government service — Whether appointment has to be made by written contract executed in the manner provided by the Government Contracts Ordinance 1949 — Federal Constitution, art. 144.

Damages — Claim for wrongful termination of employment.

The plaintiff had been appointed as temporary enforcement officer. The letter of appointment provided that his services could be terminated by giving three months' notice or one month's salary in lieu of notice. The services of the plaintiff were terminated by giving him one month's salary in lieu of notice. He then brought an action for damages for the wrongful termination of his appointment and alternatively for a declaration that he was still in the employ of the defendants. It was argued *inter alia* that the services of the plaintiff were terminated without his being given a reasonable opportunity of being heard and contrary to regulation 33(a) of Chapter D of the General Orders, regulations 49 and 50 of the Public Services (Conduct and Discipline) Regulations and articles 135(2) and 136 of the Federal Constitution. It was also submitted in the course of argument that although the Government may lawfully enter into a contract, there was no evidence in this case of a signature by the proper person for the purpose of section 2 of the Government Contracts Ordinance, 1949.

Held: as in this case the services of the plaintiff were terminated in accordance with the terms of the offer of appointment, the plaintiff could not claim a right to be heard under article 135(2) of the Federal Constitution and therefore the plaintiff's claim cannot succeed.

Semble: Appointment of officers in the Government service, temporary or otherwise, is not made by written contracts executed in the manner provided under the Government Contracts Ordinance, 1949. Such an appointment is made by the Public Services Commission. Any appointment by the Public Services Commission in exercise of its functions pursuant to article 144 of the Federal Constitution is in effect in the nature of a special contract and once an appointment is made the Government is bound by the terms and conditions of such appointment.

Cases referred to:-

(1) *Gnanasundram* v. *Public Services Commission,* [1966] 1 M.L.J. 157 at p. 159.

(2) *Parshotam Lal Dhingra* v. *Union of India,* A.I.R. 1958 S.C. 36.

(3) *Munusamy* v. *Public Services Commission,* [1967] 1 M.L.J. 199.

(4) *Satish Chandra* v. *Union of India,* A.I.R. 1953 S.C. 250.

CIVIL SUIT.

Raja Abdul Aziz for the plaintiff.

Mrs. Ng Mann Sau (Federal Counsel) for the defendants.

Cur. Adv. Vult.

Abdul Hamid J.: The plaintiff is claiming damages for the wrongful termination of his appointment as temporary enforcement officer in the Road Transport Department of the Federation of Malaya and alternatively is asking for a declaration that he is still in the employ of the defendants.

The facts insofar as they are not in dispute are that the plaintiff accepted the appointment of temporary enforcement officer on the terms and conditions contained in the letter of offer of appointment dated 21st November, 1961, the relevant part of the letter of offer is reproduced hereunder —

"I am directed to inform you that on behalf of the Government of the Federation of Malaya, the Public Services Commission is pleased to offer you appointment as temporary enforcement officer, Road Transport Department, Federation of Malaya,

on a salary of $605/- per mensem on the scale $605x23–835 with effect from the date of assumption of duty following the acceptance of this offer.

In addition you will receive a variable cost of living allowance at current rates.

2. This offer is subject to the following conditions:—

(a) That you are medically fit. Your acceptance of the offer must be accompanied by an acceptable medical certificate from a government medical officer on the attached Form Gen. 402;

(b) That you sign the statutory declaration attached. You will be liable to instant dismissal if any statement in the completed declaration is later found to be untrue;

(c) That you serve on probation for a period of Nil years. Before you can be considered for confirmation in your appointment you should pass the under-mentioned examinations:—

Nil